

(2018) 08 MP CK 0086

In the Madhya Pradesh High Court

Case No : Writ Petition No.19028, 19206, 19705, 20423 Of2016, 14986, 17217, 23419 Of2017, 1420, 1474, 3007, 6574, 15737 Of2018

Ruchir Jain & Anr

APPELLANT

Vs

State Of Madhya Pradesh. And Others

RESPONDENT

Date of Decision : 10-08-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 309

Citation : (2018) 08 MP CK 0086

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

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Regard being had to the similitude of the question involved, these petitions are analogously heard on the joint request of the parties and decided by this".....

common order.....

2. Facts are taken from WP No.19028/2016.....

3. In WP No.1420/2018, WP No.3007/2018, WP No.6574/2018 and WP No.19028/2016, the petitioners have filed applications for amendment as well".....

as additional submissions.....

4. Shri Naman Nagrath, learned senior counsel for the petitioners in these cases contended that petitioners have prayed for a relief which is totally".....

based upon the question of discrimination. He submits that petitioners are not treated as eligible for the post of Assistant Grade III because they do not.....

possess the certificate of CPCT issued by Madhya Pradesh Agency for Promotion of Information Technology (for short MAPITâ??) at the time.....

of submission of candidature whereas similarly situated candidates have been appointed by various departments. Thus, to this extent, the amendment",,,,,

applications may be allowed. Shri Amit Seth, learned Government Advocate and learned counsel appearing for the VYAPAM submit that if",,,,,

amendment is prayed for to this limited extent, they have no objection to the amendment. Accordingly, IA No.8697/2018(WP No.19028/2016), IA",,,,,

No.7727/2018(WP No.1420/2018), IA No.7782/2018(WP No.3007/2018) and IA No.8019/2018 (WP No.6574/2018) are allowed. Shri Amit Seth",,,,,

prayed for and granted permission to place reliance on the certain documents which will be passed on during the course of arguments.,,,,,

5. The relevant facts are that the petitioners in all these cases submitted their candidatures for the post of Assistant Grade-III. Admittedly, there exists",,,,,

Statutory Examination Rules pursuant to which the eligibility and qualification of the candidates is to be judged. In addition to the Examination Rules," ,,,,,

Executive Instruction dated 26.2.2015 was issued whereby it was clarified that CPCT certificate must be obtained from the institution namely;,,,,,

MAPIT.,,,,,

6. A question cropped up before the Indore and Gwalior Benches of this court whether such Executive Instruction can decide the question of,,,,,

eligibility/qualification. The Indore Bench opined that by way of said executive instruction, the Examination Rules cannot be supplanted whereas the",,,,,

Gwalior Bench opined that the executive instruction can supplement the Recruitment Rules. In view of cleavage of opinion between the Benches, a",,,,,

writ court in Jabalpur referred the matter for adjudication before the Division Bench. The Division Bench in WP No.14986/2017 opined that the view,,,,,

taken by the Gwalior Bench in the case of Alok Singh is the correct view and came to hold that the General Administration Department (GAD) was,,,,,

competent to issue Executive Instruction dated 26.2.2015 and said executive instruction supplements the Rules. Shri Nagrath, learned Sr. Counsel",,,,,

contended that after the order passed by the Division Bench in W.P.No.14986/2017, R.P.No.832/2018 was filed on the same set of documents on",,,,,

which reliance is placed in the present case. Liberty is reserved to the petitioner to raise these arguments on merits before the writ court. Accordingly," ,,,,,

the RP was withdrawn.,,,,,

7. Shri Naman Nagrath, learned senior counsel contended that as per said executive instruction, the petitioners although did not have the certificate of" ,,,,, CPCT from MAPIT till the last date of submission of candidature, similarly situated candidates were given a different treatment. He placed reliance" ,,,,, on various documents filed alongwith the additional documents and contended that one Shri Shekhar Verma is appointed in Forest Department on,,,,, 22.7.2017 whereas his CPCT score card shows that he acquired that qualification only on 1.4.2017 whereas, admittedly, the last date of submission of" ,,,,, candidature for all the candidates was 26.11.2016. Similar appointment order of one Rakesh Kumar is relied upon alongwith his CPCT certificate,,,,, which shows that he acquired the certificate on 15.1.2017 i.e. after the cut off date. Similarly, the order at page 63 is relied upon to submit that the" ,,,,, candidates have acquired qualification of CPCT from the said institution after completion of the selection process which is clearly mentioned in the,,,,, said order. Heavy reliance is placed by learned senior counsel on an order dated 2.7.2016 Annexure A/9 issued by GAD wherein certain candidates,,,,, were permitted to assume charge on their appointment with the condition that they will pass CPCT Examination from said institution within two years.,,,,, On the strength of these documents, it is urged that there are several other examples in which similar treatment was given to the other candidates." ,,,,, The petitioners were not given similar treatment which is evident from document dated 18.5.2017 issued by Directorate of Public Prosecution wherein,,,,, one of the petitioners Ruchir Jain's name is mentioned and his result was withheld because of court case.,,,,,

8. On the basis of these facts, learned Senior Counsel contended that there is a difference in not possessing the statutory qualification prescribed" ,,,,, under the statutory rules and not possessing qualification as per the executive instructions. He submits that advertisement filed in W.P.No.1420/2018,,,,, (page 119) shows that in Public Prosecution Department, the eligibility/ qualification was shown as having certificate of speed of 30 words per minute" ,,,,, from an institution recognised by the State Government. He submits that petitioners do not lack any statutory qualification/eligibility and therefore, they" ,,,,, have a right to enjoy the similar treatment.,,,,,

9. Shri Nagrath, learned Sr. Counsel placed reliance on (1991) 3 SCC 47 [Shankarsan Dash Vs. Union of India] and (2013) 16 SCC 440 [B.Amrutha" ,,,,,

Lakshmi Vs. State of Andhra Pradesh & Ors.]. In nutshell, the arguments of petitioners is that the respondent being model employer must extend the",,,,,

similar treatment to the present petitioners and petitioners may also be permitted to submit CPCT certificate within the stipulated time. It is,,,,,

further submitted that some of the petitioners have already acquired the said qualification during pendency of these matters. Thus, if they are selected,",,,,,

appointment order with similar condition may be issued in their favour.,,,,,,

10. Per contra, Shri Amit Seth, learned Government Advocate submits that the Division Bench in W.P.No.14986/2017 has made it clear that Clause",,,,,,

No.10 of the eligibility condition is a mandatory provision. The executive instruction has supplemented the statutory rules and, therefore, unless an",,,,,,

essential minimum qualification is possessed by the candidate on the last date of submission of candidature, he cannot be treated as eligible.",,,,,

11. Shri Amit Seth, learned Government Advocate contended that in W.P.No.15371/2017 (Jitendra Pratap Singh Vs. State of M.P.) decided on",,,,,,

27.10.2017, the writ court directed the respondents to permit the petitioners therein to participate in the process of selection, despite the fact that they",,,,,,

did not possess CPCT score card. The said order of writ court was set aside by the Division Bench in W.A.No.146/2018 decided on 11.5.2016. The,,,,,

writ petition of candidates was dismissed. Thus, the petitioners are not eligible to be appointed on the post in question.",,,,,

12. So far as the question of parity and example quoted by Shri Nagrath are concerned, Shri Amit Seth, learned Government Advocate placed heavy",,,,,,

reliance on document dated 25.7.2018 written by GAD to the Joint Commissioner (Revenue) Jabalpur Division Jabalpur, wherein it is clarified that in",,,,,,

the document dated 2.7.2016 (heavily relied upon by Shri Nagrath), the names of some persons have been mentioned who have been given permission",,,,,,

to obtain CPCT certificate within stipulated time. It is clarified that these persons were candidates of 2014 advertisement and at that point of time,",,,,,

there was no condition of having CPCT certificate. Thus, the special treatment was given to those persons who were candidates of previous",,,,,,

advertisement. It is strenuously contended that no parity can be claimed from those persons who are not similarly situated. GAD has not taken any,,,,,

policy decision to relax the eligibility condition and give permission to candidates to have the CPCT certificate within the stipulated time.,,,,,,

13. Shri Seth, learned Government Advocate contends that so far the order of Forest, Labour and other departments are concerned, the said orders" ,,,,,

No.,Service Group,"C a d r e of the

Post/Designation",Class,,

(1),(2),(3),(4),,

*** ***, ,,,,,

4., "Group

â??IVâ??

[Higher

Secondary

(10+2) Level]", "Assistant Grade-3 Stenotypist/ Stenographer/

JuniorStenotypist/IT Operator/Computer

Operator/Data Entry Operator/Tracer/

Patwari/Ameen/ Registration Clerk/

Electrician/Rokadia (Cashier)/Store Keeper/

Record Clerk/Record Keeper/Cashier/Private

Secretary/Training Officers/ Industrial Training

Institute and other equivalent Cadres/post." ,III,,

S.

No." ,Group, "Total

No.

question

paper", "Total

Marks",Details of question papers,

(1),(2),(3),(4),(5),

*** ***, ,,,,,

4., "Group

â??IVâ??

(Higher

Secondary

(10+2) Level.",01,100,"General Knowledge

General Hindi

General English

General Mathematics

General Aptitude

General Computer

Knowledge", "100

Marks

Group. IV-(a). - The candidate must have passed Higher Secondary Examination (10+2) and should possess a Diploma/Certificate in Computer,,,,,

Application from a recognized University, and also possess Hindi Typing Proficiency Certificate on Computer at speed of 30 words per minute from",,,,,

the institute recognized by the Government. For Stenographer, the candidate must have passed English or Hindi Shorthand Examination at a speed of",,,,,

100 words per minute from any recognized Institution/Council and for Stenotypist, the candidate must have speed of 80 words per minute in English",,,,,

or Hindi shorthand as recognized by the General Administration Department from time to time.â??,,,,,

(Emphasis supplied),,,,,

13. The General Administration Department has issued a circular No.C 3-15/2014/1/3 dated 26.02.2015. The said circular contemplates that in earlier,,,,,

circular dated 01.07.2013, the condition of Hindi Typing was done away with but instead, the Computer Typing with speed of 30 words per minute",,,,,

was made compulsory. The said condition has now been modified that the score card issued by the Science and Technology Department instead of,,,,,

Board (VYAPAM) in respect of Computer efficiency and Hindi Typing pass shall be accepted.â??,,,,,

21. The below mentioned paragraphs of same order are also relevant.,,,,,

â??18. The learned Single Bench of this Court while hearing the present petition on 02.11.2017 referred the matter to Larger Bench finding conflict,,,,,

with the two Single Bench Judgments of this Court.,,,,,

19. There is no dispute about the proposition as laid down by the Supreme Court in Ajaya Kumar Das (supra) that the statutory Rules cannot be,,,,,

altered or amended by the executive orders or circulars, as such orders or circulars cannot replace the statutory Rules. The Rules framed under the" ,,,,,

proviso to Article 309 of the Constitution of India cannot be tinkered by circulars or instructions. However, the fact required to be examined is" ,,,,,

whether the condition prescribed of qualifying CPCT certificate contravenes the conditions of eligibility as mentioned in the Rules as amended on ,,,,,

16.02.2015. The condition when restated read as under â?" ,,,,,

â??(1) a candidate must have passed Higher Secondary Examination (10+2); ,,,,,

(2) should possess a diploma/certificate in Computer Application from the recognized University ,,,,,

(3) Candidate is also required to produce proficiency certificate of Hindi Typing on computer at the speed of 30 words per minute from the ,,,,,

Government recognized institute; ,,,,,

For Stenographer, the candidate must have passed English or Hindi Shorthand Examination at the speed of 100 words per minute from any recognized" ,,,,,

Institution or Council; For Steno-typist, the candidate must have speed of 80 words per minute in English or Hindi shorthand as recognized by the" ,,,,,

General Administration Department from time to time.â?? ,,,,,

20. The proficiency certificate has distinct requisite parameters for appointment to the post of Assistant Grade-III, Steno-typist and Stenographers but," ,,,,,

the proficiency certificate is required is that recognised by the General Administration Department from time to time. The Rules have contemplated ,,,,,

Â speed of typing and/or shorthand required for different posts but the manner to determine the speed was left to be decided by the determined by the ,,,,,

General Administration department. Therefore, the Circular of General Administration Department dated 26.2.2015 that CPCT certificate is required" ,,,,,

in the manner contemplated is in fact in terms of the authority granted to the General Administration Department in the Rules.â?? ,,,,,

(Emphasis supplied) ,,,,,

22. A plain reading of order of the Division Bench shows that executive instruction dated 26.2.2015 has supplemented the rules and the requirement of ,,,,,

the said executive instruction must be read as an eligibility condition. The emphasis on this is laid in paragraph 19 and 20 of the order in Ashwani ,,,,,

Kumar Mishra (supra). Shri Nagrath, learned Senior Counsel contended that lack

of qualification/eligibility as per statutory rule and lack of the same",,,,,

based on an executive instruction are different. I do not see any merit in the said contention. As noticed, the rule is couched in a mandatory language.",,,,,

It is declared as mandatory for the candidates. Rule gives power to GAD to decide the question of recognition about the institution which can issue the,,,,

certificate. In turn, the GAD much before the advertisement, issued the circular dated 26.2.2015 and, therefore, the circular dated 26.2.2015 is in",,,,,

consonance with rule. The requirement prescribed in the instructions, has to be read along with the rule. I am unable to persuade myself that despite",,,,,

the fact that the statutory rules recognise the power of GAD to issue the instructions whereupon the instruction is issued, yet the eligibility condition",,,,,

mentioned in the instructions will not be treated as minimum essential qualification.,,,,,

In 1987 (2) SCC 188 (Brij Mohan Singh Chopra vs. State of Punjab), the Apex Court held that since the rule does not contain any further guidelines,",,,,

the State Government issued a government order on 26-9-1975 laying down the guidelines and the procedure necessary to be followed in exercising,,,,

powers under Rule 3 for premature retirement of a government employee. In the same judgment, it was further held that the executive instructions",,,,,

issued as contained in these two government orders provide sufficient guidance for the exercise of power under Rule 3. According to these,,,,

instructions the service record of an employee has necessarily to be considered while taking decision for the premature retirement of an employee and,,,,

if there was a single entry casting doubt on the integrity of an employee, the premature retirement of such an employee would be in public interest. In",,,,,

the absence of any details by which the question of public interest could be determined in the rules it was open to the State Government to issue,,,,

executive instructions for the guidance of the appropriate authority to exercise the power of premature retirement and the instructions so issued as,,,,

contained in the aforesaid government orders have binding character.,,,,,

In Sant Ram Sharma vs. State of Rajasthan and another, AIR 1967 SC 1910, the Apex Court held that although Government cannot supersede",,,,,

statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the",,,,,

Government can fill up gaps and supplement the rules and issue instructions not

inconsistent with the rules already framed and these instructions will,,,,,

govern the conditions of service. This judgment was quoted with profit by Supreme Court in Union of India vs. K.P. Joseph and others, (1973) 1 SCC",,,,,

194. The Karnataka High Court in 2006 SCC OnLine Kar 256 (B. Srinivasa Reddy vs. Karnataka Urban Water Supply and Drainage Board,,,,,

Employeesâ??Association considered the said Supreme Court judgment on the point and opined that the Apex Court in K.P. Joseph(Supra), after",,,,,

referring to its earlier decision in Sant Ram Sharma(Supra), it has held that although Government cannot supersede statutory rules by administrative",,,,,

instructions yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and",,,,,

supplement the recruitment rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions,,,,,

of service. I find support, in my view, from these judgments and I am constrained to hold that executive instruction is binding in the present case.",,,,,

Furthermore, the order of writ court in the case of Jitendra Pratap Singh (supra) wherein the direction is issued to permit the candidates to participate",,,,,

in the selection without having CPCT Score Card could not sustain judicial scrutiny by the Division Bench in W.A.No.146/2018. The writ petition of,,,,,

candidates was dismissed.

23. In view of the order passed in W.A.No.146/2018 and the order of Division Bench in the case of Ashwani Kumar Mishra (supra), I am unable to",,,,,

hold that having CPCT Score Card is not the minimum essential qualification. This is equally settled that if rules and binding instructions prescribe an,,,,,

eligibility condition/qualification, the candidate must possess it even if advertisement is couched in a different language or prescribes a different",,,,,

eligibility.

24. Putting it differently, in the event of any conflict about eligibility condition prescribed in the recruitment rules read with binding instructions and the",,,,,

advertisement, the rules/instructions will prevail.",,,,,

25. At the cost of repetition, the rule read with instruction make it obligatory and mandatory that the candidates must have CPCT Score Card on the",,,,,

last date of submission of candidature. The argument of petitioner is based on the allegation of discrimination and violation of Article 14 of the,,,,,

Constitution of India. This contention needs serious consideration. The main

thrust of argument of petitioner is based on the order dated 2.7.2016,,,,,

Annexure A-9 wherein GAD permitted certain candidates to obtain the CPCT Score Card within two years from their appointment. It was argued,,,,,

that GAD being a nodal department has taken the said conscious decision which should be made applicable to all the departments and candidates. This,,,,,

aspect was explained by learned Government Advocate by placing reliance on GAD circular dated 25.7.2018 which reads as under:,,,,,

Â ^e/;iznsâ??k 'kkluÂ,,,,,

Â lkekU; izâ??kklu foHkkxÂ,,,,,

Â Â ea=ky;Â Â Â Â Â Â Â Â,,,,,

dekad ,Q 02&03@2016@d@7&1@LFkk0 Hkksiky] fnukad 25-07-2018",,,,,

izfr]Â Â Â Â Â Â Â Â,,,,,

lqJh fufe""kk tk;loky]Â Â Â Â Â Â Â Â,,,,,

la;qDr vk;qDr Â¼jktLoÂ½Â Â Â Â Â Â Â,,,,,

tciqj laHkkx tciqj Â¼e-iz-Â½Â Â Â Â Â Â Â,,,,,

fo""k;%&Â lkekU; iâ??kklu foHkkx ds vknsâ??k dekad ,Q",,,,,

02&03@2016@d@7&1@LFkk0Â fnukad 02-07-2016 dsÂ Â lanHkZ esa",,,,,

oLrqfLFkfr ds laca/k esaAAÂ Â Â Â Â Â Â,,,,,

lkekU;Â iâ??kkluÂ foHkkxÂ }kjKÂ fnukadÂ 02-07-2016Â dks ftuÂ 06Â O;fDr;ksaÂ ds fu;qfDr vknsâ??k tkjh fd, x, gS] os O;kie ds o""kZ",,,,,

2014 ds foKkiu ds vk/kkj ijÂ p;furÂ gSAÂ blÂ foKkiuÂ esaÂ lh-ih-lh-Vh-Â dhÂ 'krZÂ ughaÂ FkhÂ Â¼foKkiuÂ dh Nk;kizfr layXu,,,,,

gSÂ½A mYys[kuh; gS fd rRle; lh-ih-lh-Vh- ds funsZâ??k voâ??; tkjhÂ gq,Â FksÂ fdUrqÂ lh-ih-lh-Vh-Â dhÂ ijh{kkÂ vk;ksftrÂ ugha",,,,,

gqbZÂ FkhAÂ blÂ dkj.k lh-ih-lh-Vh- ijh{kk mRrh.kZ djus gsrq 2 o""kZ dk volj iznku djus dh 'krZ ij fu;qfDr vknsâ??k tkjh fd;k x;k Fkka",,,,,

layXu mijksDrkuqlkj%&,,,,,

Â¼e/kq ukgjÂ½,,,,,

voj lfpo Â¼LFkkiukÂ½,,,,,

e/;iznsâ??k 'kklu] lkekU; iâ??kklu foHkkx^^,,,,,

26. The circular makes it clear that the permission to obtain CPCT Score Card was extended in favour of those candidates who were selected on the,,,,,

basis of an advertisement of 2014 and at the relevant time, the executive instruction dated 26.2.2015 was not issued. No CPCT examination was" ,,,,,

conducted at that point of time. Thus, it is crystal clear that petitioners cannot claim parity with those six candidates of 2014 advertisement because" ,,,,,

the eligibility condition was different in the year 2014. The parity can be claimed with similarly situated persons. The equity, parity and equality are" ,,,,,

positive concepts which may help a litigant provided law is in his favour. In the instant case, it is noticed that certain departments have issued orders in" ,,,,,

favour of certain candidates who at the time of submission of candidature did not have requisite CPCT Score Card. This action of those departments ,,,,,

is not in consonance with the statutory rules and the instruction dated 26.2.2015. ,,,,,

27. Shri Nagrath, learned Sr. Counsel placed reliance on the judgment of the Supreme Court reported in 1991 3 SCC 47 (Shankar Das Vs. Union of" ,,,,,

India. It was held therein that candidates included in the merit list has no indefeasible right to appointment even if there exist vacancies. However," ,,,,,

Government needs to assign justifiable reasons if it decides not to fill up those post. The said judgment has no application in the facts and ,,,,,

circumstances of the present case. ,,,,,

28. In the case of B. Amarnatha Laxmi (Supra), the Apex Court held that if there is a criteria laid down for selection, the administration has to confine" ,,,,,

to the same and it cannot impose any additional criteria. In Ashwani Kumar Mishra(Supra), it has already been held that executive instruction has" ,,,,,

supplemented the rules and therefore this judgment has no application in the facts and circumstances of the present case. ,,,,,

29. The equal treatment can be claimed with those who possess minimum essential qualification. If certain departments have appointed the persons de ,,,,,

horse the rules and despite not having minimum essential qualification, it cannot become precedence or example to follow under the garb of Article 14" ,,,,,

of the Constitution. The eligibility condition of a candidate must be assessed on the last date of submission of candidature. See 2013 (11) SCC 58 ,,,,,

(Rakesh Kumar Sharma vs. State (NCT of Delhi) and others). In catena of judgments, the Apex Court opined that negative equality cannot be" ,,,,,

claimed by a similarly situated person. The petitioners are unable to show that the persons with whom parity is claimed were having minimum essential ,,,,,

qualification at the time of submission of candidature. If despite not having that qualification, they have been favoured, it cannot become example to be" ,,,,,

followed nor any mandamus can be issued for this purpose. See: 1997 (1) SCC 35 (Secretary, Jaipur Development Authority, Jaipur), 2000 (4) SCC" ,,,,,

186 (C.S.I.R. and others vs. Dr. Ajay Kumar Jain), 2007 (8) SCC 249 (State of Jharkhand Vs. Manshu Kumbhkar) and 2011 (3) SCC 436 (State of" ,,,,,

Orissa and another vs. Mamata Mohanty).,,,,,

30. In view of foregoing discussion, petitioners have failed to show that any legal, vested or fundamental rights of petitioners were infringed. In" ,,,,,

absence of possessing CPCT score card till last date of submission of candidature, no mandamus can be issued for considering and appointing them." ,,,,,

Resultantly, petitions fail and are hereby dismissed. Ad interim orders are vacated. No cost." ,,,,,